

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOHN DOE, AS GUARDIAN AD LITEM FOR
J DOE, A MINOR

Plaintiffs,

vs.

Case No.: 3:12-cv-00237 RCJ-WGC

CHURCHILL COUNTY SCHOOL DISTRICT,
a political subdivision of the State of Nevada;
AUSTIN HERZOG; TREVOR PARSONS, a
minor; RACHEL DAHL, individually and as a
natural parent of TREVOR PARSONS; NICK
BOROVAC, a minor; BRIT BOROVAC,
individually and as natural parent of NICK
BOROVAC; TYLER COLE, a minor,
DANETTA COLE, individually and as natural
parent of TYLER COLE; HECTOR ANAYA, a
minor;

Defendants.

COMPLAINT & JURY DEMAND

JURISDICTION AND VENUE

1. In this case, it is alleged that severe physical, sexual and psychological harassment was inflicted upon the minor Plaintiff when fellow students/athletes engaged in ritualistic hazing activities to which, over the years, the Defendant Churchill County School District had displayed deliberate indifference. This deliberate indifference subjected the Plaintiff to sexual harassment.

2. The Defendant Churchill County School District exercised substantial control over the sexual harasser students and harassed students and the context in which the known harassment occurred, and possessed actual knowledge of the sexual harassment practices such as to be able to respond with protective remedial measures, but failed to do so.

3. That because of the hazing practices, the minor Plaintiff was subjected to, and did suffer the aforementioned sexual, physical and psychological harassment which was so severe, pervasive, and objectively offensive that he was deprived of the educational opportunities and/or benefits provided by Churchill County High School.

1 (f) Being insulted with homophobic slurs;

2 (g) Being spanked/hit repeatedly with the spatula on the back, legs and buttocks;

3 (h) Jumping and kneeing him repeatedly in his back;

4 (i) Being spat upon;

5 (j) The handle of a spatula being covered with a condom and then inserted into his gluteal
6 folds, suggesting anal penetration;

7 (k) Placement of hand cream upon his buttocks such as to create and/or suggest that someone
8 had ejaculated on him;

9 (l) Chocolate pudding and ice water being thrown upon him while he took a shower to clean
10 up after the initial assault;

11 (m) Being urinated upon;

12 (n) Being falsely imprisoned and confined against his will; and

13 (o) Being battered.

14 20. In addition to the aforementioned acts of hazing, the minor Defendants, individually
15 and in concert with one another, and against the will of the minor Plaintiff, took digital photos of the
16 event and sent them via text messages to fellow students at Churchill County High School. They also
17 placed the photos on the internet, further subjecting the minor Plaintiff to unbearable ridicule and
18 scorn by fellow athletes and classmates at Churchill County High School.

19 21. The ridicule and scorn by fellow students and athletes went unabated by school
20 officials. One such incident involved a fellow student making direct reference to the minor Plaintiff
21 as "spatula boy."

22 22. Little if anything was done by school officials to protect the minor Plaintiff from
23 further psychological trauma following the hazing incident. On one occasion a member of the
24 athletic staff at Churchill County High School expressed his displeasure with the fact that the school
25 and fellow athletes were being held somewhat accountable for the events, and stated "can you believe
26 that they are making such a big thing out of this?"
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1 23. Because of the minor Plaintiffs' poor upbringing by his biological parents and his
2 subsequent adoption, as well as the rather recent estrangement of his adoptive parents, Plaintiff was
3 extremely susceptible to psychological and emotional injury resulting from the hazing incident, as
4 well as the subsequent scorn and ridicule.

5 24. The Defendant Churchill County School District was fully aware and had full
6 knowledge of the minor Plaintiff's particular susceptibility and vulnerability to psychological and
7 emotional injury based upon accumulated school records and reports, and had full knowledge that the
8 minor Plaintiff was deemed eligible under the Individuals with Disabilities Education Act (IDEA)
9 and diagnosed with attention deficit disorder (ADHD). The Defendant, Churchill County School
10 District was also fully aware of the factual allegations of paragraphs 18-21, inclusive, above.

11 25. The accumulated school records and reports generated by and in the possession of the
12 Defendant Churchill County School District reflected that the minor Plaintiff was particularly
13 susceptible to psychological and emotional injury, said records and reports revealing that the minor
14 Plaintiff suffered from emotional and learning disabilities, and displayed behavior problems while
15 attending school in Fallon, Nevada.

16 26. As a result of the events alleged herein, the minor Plaintiff did in fact suffer severe
17 emotional and psychological trauma and was thereafter subjected to extensive psychological analysis,
18 evaluations and treatment on both an in-hospital for 4 1/2 months and out-patient basis—still
19 ongoing.

20 27. The minor Plaintiff required physical therapy for three months for shoulder and back
21 damage/pain.

22 28. The minor Plaintiff is likely to require psychological analysis, evaluation and
23 treatment for the remainder of his life due to the aforementioned events.

24 29. Had the Churchill County School District not displayed a deliberate indifference to the
25 hazing incidents which took place prior to the incident in question, the minor Plaintiff would not have
26 suffered the physical, emotional and psychological injuries alleged herein.
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1 detracted from Plaintiff's educational experience and denied him equal access to the school's
2 resources and opportunities by creating a disadvantaged school environment.

3 36. The Defendant Churchill County School District had actual knowledge of the sexual
4 harassment. Defendant, Churchill County School District officials with authority both to address the
5 sexual harassment and discrimination and to initiate corrective measures on Plaintiff and other
6 students' behalf had actual knowledge of a substantial risk of this kind and context of sexual
7 harassment and abuse of students, including Plaintiff, and could have prevented the Plaintiff's harm
8 with proper remedial action.

9 37. That subsequent to the events on December 3, 2010, the fellow student and/or athletes
10 continued to engage in conduct intended to further harass, embarrass and subject the minor Plaintiff
11 to additional scorn and ridicule by disseminating information and photography to Fallon students
12 and/or athletes, said conduct going unabated by school officials.

13 38. That as a result of the sexual harassment and subsequent ridicule and scorn, the minor
14 Plaintiff was forced to leave Churchill County High School and thereby being deprived of the
15 educational opportunities and/or benefits provided by that federally funded institution.

16 39. That as a result of the sexual harassment, ridicule and scorn the minor Plaintiff did in
17 fact suffer severe emotional and psychological trauma such as to require extensive psychological
18 analysis, evaluation and treatment on both an in-hospital and out-patient basis, the costs of which
19 entitles the Plaintiffs to special damages in an amount to be proven at time of trial.

20 40. That as a further result of the aforementioned sexual harassment ridicule and scorn,
21 the Plaintiffs' claim general damages for his physical and psychological harm and his humiliation,
22 degradation and general emotional distress in an amount in excess of \$75,000.00.

23 41. That the Plaintiffs were required to retain counsel for purposes of enforcing and
24 prosecuting this action and is entitled to the recovery of reasonable attorney's fees and costs.

SECOND CAUSE OF ACTION

Negligence Churchill County School District

42. Plaintiffs repeat and reallege paragraphs 1-31 of his Complaint and paragraphs 32-41 of the First Cause of Action of his Complaint as if fully set forth herein and incorporates them herein by reference.

43. The Defendant Churchill County School District failed to exercise reasonable care in protecting its students and or athletes from ritualistic hazing activities.

44. That as a proximate result of the negligence on the part of Defendant, Churchill County School District, the minor Plaintiff sustained and suffered the aforementioned damages.

THIRD CAUSE OF ACTION

**Intentional conduct by Austin Herzog, Trevor Parsons
Nick Borovac, Tyler Cole and Hector Anaya**

45. Plaintiffs repeat and reallege paragraphs 1-31 of his Complaint, paragraphs 32-41 of the First Cause of Action of his Complaint and paragraphs 42-44 of the Second Cause of Action of his Complaint as if fully set forth herein and incorporates them herein by reference.

46. That the Defendants Austin Herzog, Trevor Parsons, Nick Borovac, Tyler Cole and Hector Anaya engaged in extreme outrageous malicious conduct such as to inflict severe and permanent physical, emotional and psychological injuries upon the minor Plaintiff.

47. That as a proximate result of the extreme, outrageous, malicious and oppressive conduct committed by said Defendants with conscious disregard for his well being, Plaintiffs sustained and suffered the aforementioned injuries and damages.

48. That as a further proximate result of the aforementioned extreme, outrageous, malicious and oppressive conduct, said Defendants are liable to the Plaintiffs in an amount in excess of \$75,000.00 pursuant to Chapter 42 of the Nevada Revised Statutes.

FOURTH CAUSE OF ACTION

Negligence of Defendants Rachel Dahl, Brit Borovac and Danetta Cole

49. Plaintiffs repeat and reallege paragraphs 1-31 of his Complaint, paragraphs 32-41 of the First Cause of Action of his Complaint, paragraphs 42-44 of the Second Cause of Action of his Complaint and paragraphs 45-48 of the Third Cause of Action of his Complaint as if fully set forth herein and incorporates them herein by reference.

50. That at all times pertinent hereto, the Defendants Rachel Dahl, Brit Borovac and Danetta Cole failed to exercise reasonable care in the supervision, control of their respective minor children.

51. That as a proximate result of the negligence of said Defendants; Plaintiffs sustained and suffered the aforementioned damages.

FIFTH CAUSE OF ACTION

Liability of Defendants Rachel Dahl, Brit Borovac and Danetta Cole

52. Plaintiffs repeat and reallege paragraphs 1-31 of his Complaint, paragraphs 32-41 of the First Cause of Action of his Complaint, paragraphs 42-44 of the Second Cause of Action of his Complaint, paragraphs 45-48 of the Third Cause of Action of his Complaint and paragraphs 49-51 of the Fourth Cause of Action of his Complaint as if fully set forth herein and incorporates them herein by reference.

53. That the conduct of the minor Defendants to wit: Trevor Parsons, Nick Borovac; Tyler Cole; and Hector Anaya, at all times pertinent hereto, was willful and malicious in nature such as to make their natural parents jointly and severally liable for such conduct pursuant to Nevada Revised Statutes 41.470.

54. That as a proximate result of the willful and malicious conduct by the minor Defendants, the Defendants Rachel Dahl, Brit Borovac and Danetta Cole are now jointly and

1 severally liable to the minor Plaintiff for the aforementioned injuries and damages he suffered at the
2 hands of the minor Defendants.

3 WHEREFORE, Plaintiffs pray for judgment in his favor and against Defendants, jointly and
4 severally, for the aforementioned damages, punitive damages general damages, special damages,
5 damages pursuant to Nevada Revised Statute 41.470 in an amount in excess of \$10,000.00:

- 6 1. Special damages, both past and future, in an amount to be proven at time of trial.
- 7 2. General damages in excess of \$75,000.00 against the Defendants and each of them
- 8 3. Punitive damages against the minor Defendants in an amount in excess of \$15,000.00
- 9 4. For damages pursuant to Nevada Revised Statute 41.470 in an amount of \$10,000.00
10 against the named Defendants Rachel Dahl, Brit Borovac, Danetta Cole.
- 11 5. For reasonable attorney fees and costs pursuant to 20 U.S.C. § 1681 and 42 U.S.C. § 1988.
- 12 6. For such other and further relief as this Court may deem proper.

13 DATED this 22nd day of May, 2012.

14 /s/ Don Nomura

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